

HOUSE BILL No. 1581

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-27.

Synopsis: Designation of Indiana land and waters. Provides that: (1) a federal executive branch agency, committee, commission, or officer; (2) a state executive branch agency, committee, commission, or officer; or (3) a private organization; may not designate land or waters in Indiana without obtaining the approval of the county executive and the general assembly. Provides that a property owner may provide written permission for the property owner's land to be included in the designation. Provides that a property owner may file a claim with the county executive for damages if the property owner's property is included in the designation without the property owner's written permission.

Effective: Upon passage.

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January 17, 2001, read first time and referred to Committee on Agriculture, Natural Resources and Rural Development.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1581

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-27 IS ADDED TO THE INDIANA CODE AS A
2 **NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON**
3 **PASSAGE]:**

4 **ARTICLE 27. DESIGNATION OF LAND AND WATERS**

5 **Chapter 1. Definitions**

6 **Sec. 1. As used in this article, "applicant" refers to:**

7 (1) an agency, a committee, a commission, or an officer of the
8 executive branch of the federal government;

9 (2) an agency, a committee, a commission, or an officer of the
10 executive branch of the state government; or

11 (3) a private organization.

12 **Sec. 2. As used in this article, "application" refers to an**
13 **application for a designation under this article.**

14 **Sec. 3. As used in this article, "designation" refers to a**
15 **designation by an applicant of Indiana lands and waters that is not**
16 **subject to local zoning approval.**

17 **Chapter 2. General Provisions**



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1 **Sec. 1.** An applicant may not designate land or waters located in
 2 Indiana without complying with the procedures set forth in this
 3 article.

4 **Chapter 3. Application for Designation**

5 **Sec. 1.** An applicant that wants to designate land or waters
 6 located in Indiana must submit an application to the county
 7 executive of each county that is included within the proposed
 8 designation.

9 **Sec. 2.** An application submitted under section 1 of this chapter
 10 must include the following information:

11 (1) The name and address of each applicant, and the signature
 12 of the applicant or of an individual acting on behalf of the
 13 applicant.

14 (2) The authority under the United States Constitution and
 15 the Constitution of the State of Indiana by which the
 16 designation is proposed.

17 (3) A full description of the proposed designation, including
 18 the purpose of the proposed designation.

19 (4) The duration of the proposed designation.

20 (5) A description of the impact of the proposed designation
 21 upon local and state tax revenues.

22 (6) A list of each property to be included in the proposed
 23 designation.

24 (7) A description of the impact of the designation upon
 25 property values and property rights, including the impact
 26 upon the right to use and prosper from property.

27 (8) A description of the full scope and impact of any
 28 regulations, policies, or procedures that shall or may result
 29 from the proposed designation, including:

30 (A) by what authority the regulations, policies, or
 31 procedures may or shall be imposed; and

32 (B) the penalties that the regulations, policies, or
 33 procedures may or shall impose.

34 (9) A description of the impact of the proposed designation
 35 upon the local and state economies.

36 **Sec. 3.** An application must be accompanied by a filing fee in the
 37 amount of ten thousand dollars (\$10,000). The proceeds from a fee
 38 paid under this section may be used to defray the county's hearing
 39 and notification costs.

40 **Chapter 4. Public Hearing**

41 **Sec. 1.** The county executive shall hold a hearing on an
 42 application not less than thirty (30) days after the date on which

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the application is filed.

Sec. 2. The county executive shall publish at least four (4) notices of each public hearing that is held concerning the application.

Sec. 3. (a) The county executive shall receive testimony on the application.

(b) The county executive shall:

(1) record the testimony; and

(2) receive exhibits for and against the proposed designation into evidence.

(c) The county executive may not impose limits upon:

(1) reasonable public input; and

(2) exhibits presented as evidence.

Sec. 4. After at least one (1) public hearing, the county executive shall issue findings of fact in which the county executive approves or denies the application. The findings of fact shall be:

(1) approved by a majority of the total number of members of the county executive at a public hearing;

(2) based upon the testimony and exhibits presented at a public hearing; and

(3) attached to the application with the testimony and exhibits.

Sec. 5. All records of the application, including testimony, exhibits, and findings of fact, shall be preserved by the county executive.

Chapter 5. Notification of Findings of Fact

Sec. 1. The county executive shall, not later than one (1) year after the date on which the county issues findings of fact approving an application, notify every owner of property listed in the application under IC 5-27-3-2(6).

Sec. 2. The notice provided under section 1 of this chapter shall include the following information:

(1) A summary description of the proposed designation.

(2) The location where the:

(A) hearing testimony;

(B) exhibits; and

(C) findings of fact;

can be reviewed.

(3) A request to each owner of property listed in the application that the property owner give notarized written permission for the property owner's property to be included in the proposed designation.

(4) A disclosure to the property owner that:



(A) as provided in section 5 of this chapter, the property owner may revoke written permission given under subdivision (3); and

(B) providing written permission under subdivision (3) precludes the property owner from filing a claim for damages under IC 5-27-7 while the written permission is in effect.

Sec. 3. Ninety (90) days after the notice to property owners is issued, the county executive shall determine the assessed value of property whose owners have not voluntarily given permission for their property to be included in the proposed designation.

Sec. 4. The county executive shall:

(1) notify the applicant of the property owners listed on the application, as set forth in IC 5-27-3-2(6), who have voluntarily given written permission for their property to be included in the proposed designation; and

(2) assess a bond requirement of ten percent (10%) of the assessed value of the property included in the application for the proposed designation for which written permission was not voluntarily obtained from the property owners.

Sec. 5. A property owner who gives permission for the owner's property to be included in the designation can revoke the permission by giving written notice of the revocation to the county executive not more than thirty (30) days after the permission was given.

Sec. 6. (a) The county executive shall charge the applicant for the cost of the hearings and the cost of notifying property owners.

(b) The county executive shall first apply the proceeds from a filing fee paid under IC 5-27-3-3 to the cost of the hearing and notification costs. An applicant shall reimburse the county for the cost of the hearings and notifications that exceeds the amount of the filing fee.

Chapter 6. Approval by the General Assembly

Sec. 1. This chapter applies to an application for designation of land or waters that has been approved by the county executive under IC 5-27-4.

Sec. 2. After the county executive receives from the applicant:

(1) the bond described in IC 5-27-5-4(2); and

(2) payment for the assessed hearing and notification costs under IC 5-27-5-6;

the county executive shall forward to the general assembly for its consideration copies of the application, including copies of the

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1 hearing testimony, exhibits, findings of fact, and designation bond
2 described in IC 5-27-5-4(2).

3 Sec. 3. (a) If a majority of the members of the general assembly
4 vote in favor of the designation, the proposed designation shall be
5 passed by the general assembly and forwarded to the governor for
6 the governor's approval and signature.

7 (b) If the governor approves the designation as presented by the
8 general assembly, the designation shall be imposed upon Indiana
9 lands and waters.

10 Chapter 7. Damages

11 Sec. 1. This chapter applies to an applicant whose application
12 for designation of land or waters that has been approved by the
13 county executive, the general assembly, and the governor.

14 Sec. 2. A property owner:

15 (1) whose property is included in a designation; and
16 (2) who does not voluntarily give written permission to have
17 the owner's property included in the designation;
18 may file a claim for damages resulting from the imposed
19 designation with the county executive of the county where the
20 property is located.

21 Sec. 3. A property owner's claim for damages may include:

- 22 (1) court costs;
23 (2) attorney's fees;
24 (3) increased costs of production resulting from the
25 designation; and
26 (4) loss of:
27 (A) production;
28 (B) income;
29 (C) property value; or
30 (D) property use;
31 resulting from the designation.

32 Sec. 4. (a) The county executive shall approve or reject a claim
33 for damages under section 3 of this chapter by:

- 34 (1) vote of a majority of the total membership of the board of
35 commissioners, in the case of a county not having a
36 consolidated city; or
37 (2) decision of the mayor of the consolidated city, in the case
38 of a county having a consolidated city.

39 (b) If a claim for damages is rejected by the county executive,
40 the property owner filing the claim may refile the claim in the
41 circuit or superior court of the county where the property is
42 located.

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Chapter 8. Bond

Sec. 1. This chapter applies to an applicant whose application for designation of land or waters has been approved by the county executive, the general assembly, and the governor.

Sec. 2. The county executive shall annually review the applicant's bond described in IC 5-27-5-4(2) to determine if the bonded amount is sufficient.

Sec. 3. (a) An award of a damage claim shall be collected from the bond.

(b) If at any time:

(1) the bond lapses;

(2) the damage awards exceed the bonded amount; or

(3) the annual review of the bonded property under section 1 of this chapter indicates that the amount of the bond is less than ten percent (10%) of the assessed value of the property included in the designation without the property owner's written permission;

the county executive shall notify the bond surety and the applicant by registered mail of the insufficiency of the bond.

Sec. 4. (a) Not more than thirty (30) days after receiving the notification under section 3 of this chapter, the applicant must restore the amount of the bond to the greater of the following:

(1) The highest damage award, if damages have been awarded on a claim under this article.

(2) Ten percent (10%) of the assessed value of property included in the designation without the property owner's written permission.

(b) If the applicant fails to restore the bond as required by subsection (a), the designation shall be immediately and irrevocably terminated.

SECTION 2. An emergency is declared for this act.

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